

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.5176 OF 2005

Shri Babasaheb Tukaram Pawar : Petitioner
(Orig. Applicant)

V/s.

The Divisional Commissioner, Pune
Division, Pune & Ors. : Respondents
(Orig. Opponents)

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Mr.Dilip Bodake for the petitioner.

Mr.A.H.Palekar, Asstt. Govt. Pleader, for the respondent
nos.1 & 2.

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CORAM : S.A. BOBDE, J.

August 31, 2005.

P.C.:

1. Rule, returnable forthwith.

Mr.Palekar, learned Asstt. Govt. Pleader for the
respondent nos.1 and 2, waives service of rule.

Heard by consent.

2. The petitioner was Sarpanch of the Gram Panchayat,
taluka Man, Dist. Satara. By this petition, the

petitioner has challenged the order of the Divisional Commissioner, Pune Division, dated 15.7.2005 dismissing his appeal and confirming the order of the Addl. Collector, Satara, in a no-confidence motion passed against him in a special meeting held on 17.1.2005.

3. The petitioner was elected for a period of five years from September 2002 to September 2007. One-third of the members of the Gram Panchayat made a requisition to the Tahsildar for convening a special meeting for considering the no-confidence motion against the petitioner. This application was made on 10.1.2005. The Tahsildar issued a notice convening a special meeting on the same day. The meeting was held on 17.1.2005. That meeting was presided over by the Naib Tahsildar who recorded that notice of no-confidence has been passed against the petitioner by a majority of 8:2.

4. The petitioner preferred an appeal to the Addl. Collector which was rejected. This order has been confirmed by the Addl. Commissioner by the impugned order.

5. Mr.Bodake, learned counsel for the petitioner, raised two submissions. Firstly, he submitted that the meeting

ought to have been presided by the Tahsildar and could not have been presided over by the Naib Tahsildar, as has been done in the present case. He, therefore, submits that there is a breach of section 35 of the Bombay Village Panchayats Act, 1958, hereinafter referred to as the "Act".

6. There is no merit in this contention, in view of the decision of this Court in *Sahebrao Khandu Patil v. Sau. Joharabai Latif Patel* (2002 (4) All M.R. 81) in which the learned single Judge of this Court has repelled a similar contention on the basis of sub-section (2) of section 7 of the Maharashtra Land Revenue Code which empowers the Government to appoint one or more Naib Tahsildar to assist the Tahsildar; the term "Tahsildar" not having been defined in the Act. Relying on the principle that generally speaking, the provisions of a statute creating public duties are directory and those conferring private rights are imperative and the case is such that to hold null and void acts done in neglect of this duty would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty, it has been the practice of the Courts to hold such provisions to be directory only, the neglect of them not affecting the validity of the acts done. This principle has been

enunciated by the Supreme Court in Dattatraya Moreshwar v. The State of Bombay and others (A.I.R. 1952 SC 181). There is thus no merit in this contention.

7. The next contention is that notice for special meeting is required to be convened within a period of seven days from the date an application to that effect is made to the Naib Tahsildar. Notice was given to the Tahsildar on 10.1.2005 and it was convened on 17.1.2005 and, therefore, it was not "within seven days" of that application. There is no merit in this contention either.

8. Mr.Palekar, the learned Asstt. Govt. Pleader, brought to my notice the decisions of this Bombay in Sanjay P. Chavan v. State of Maharashtra (2003) (2) Mah.L.R. 85) and Pandhari S. Patil v. State of Maharashtra [2002 (2) Mah.L.R. 66].

9. Section 35 of the Act reads as follows:-

"35. Motion of no confidence.--(1) A motion of no confidence may be moved by not less than one-third of the total number of the members who are for the time being entitled to sit and vote at any meeting of the panchayat against

the Sarpanch or the Upa-Sarpanch after giving such notice thereof to the Tahsildar as may be prescribed. Such notice once given shall not be withdrawn.

(2) Within seven days from the date of receipt by him of the notice under sub-section (1), the Tahsildar shall convene a special meeting of the panchayat for considering the motion of no confidence at the office of the panchayat at a time to be appointed by him and he shall preside over such meeting. At such special meeting, the Sarpanch or the Upa-Sarpanch against whom the motion of no confidence is moved shall have a right to speak or otherwise to take part in the proceedings at the meeting (including the right to vote).

(3) If the motion is carried by a majority of not less than two-third of the total number of the members who are for the time being entitled to sit and vote at any meeting of the panchayat, the Sarpanch or the Upa-Sarpanch, as the case may be, shall cease to hold office after seven days from the date on which the

motion was carried unless he has resigned earlier or has disputed the validity of the motion so carried as provided in sub-section (3-B); and thereupon the office held by such Sarpanch or Upa-Sarpanch shall be deemed to be vacant.

Provided that no such motion of no confidence shall be brought within a period of six months from the date of election of Sarpanch or Upa-Sarpanch.

(3-A) If a motion is not moved or is not carried by a majority of not less than two-third of the total number of the members who are for the time being entitled to sit and vote at any meeting of the panchayat, no such fresh motion shall be moved against the Sarpanch or, as the case may be, the Upa-Sarpanch within, a period of one year from the date of such special meeting.

(3-B) If the Sarpanch or, as the case may be, the Upa-Sarpanch desires to dispute the validity of the motion carried under

sub-section (3), he shall, within seven days from the date on which such motion was carried, refer the dispute to the Collector who shall decide it, as far as possible, within fifteen days from the date on which it was received by him; and any such decision shall, subject to an appeal under sub-section (3-C), be final.

(3-C) Any person aggrieved by the decision of the Collector may, within seven days from the date of receipt of such decision, appeal to the Commissioner who shall decide the appeal, as far as possible, within fifteen days from the date on which the appeal is received by him, and any such decision shall be final.

(3-D) When on a reference made to him under sub-section (3-B), the Collector upholds the validity of the motion carried under sub-section (3) and no appeal is made by the Sarpanch or the Upa-Sarpanch under sub-section (3-C) within the limitation period specified in that sub-section, or where an appeal is made under sub-section (3-C) but it is

rejected by the Commissioner, the Sarpanch or, as the case may be, the Upa-Sarpanch shall cease to hold office, in the former case, immediately after the expiry of the said limitation period and, in the latter case, immediately after the rejection of the appeal, and thereupon the office held by such Sarpanch or Upa-Sarpanch shall be deemed to be vacant.

(4) In cases where the offices of both the Sarpanch and Upa-Sarpanch become vacant simultaneously, the District Village Panchayat Officer or such other officer as he may authorise in this behalf shall, pending the election of the Sarpanch exercise all the powers and perform all the functions and duties of the Sarpanch but shall not have the right to vote in any meetings of the panchayat."

10. It is settled law that while calculating seven days' period prescribed by the section, the date of receipt of the notice has to be excluded vide Sanjay P. Chavan v. State of Maharashtra (2003 (2) Mah.L.R. 85). Another aspect of the same contention raised by the learned

counsel for the petitioner is that the day on which the application was made to the Tahsildar cannot be excluded, if the Tahsildar has acted on the application and issued a notice for convening a special meeting on the same day. There is no legal basis or merit in this contention. Coincidentally, the facts of the case in Sanjay P. Chavan's case (supra) are similar in this regard.

11. In the circumstances, there is no merit in this petition which is hereby dismissed. The rule is discharged.

S.A. BOBDE, J.